Case 2:17-mj-00021-jmc Document 1 Filed 03/10/17 Page 1 of 1

AO 106 (Rev. 04/10) Application for a Search Warrant

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED
2017 MAR 10 AM 9:34
CLERK
BY [signature]
DEPUTY CLERK

UNITED STATES DISTRICT COURT

for the
District of Vermont

In the Matter of the Search of
(Briefly describe the property to be searched or identify the person by name and address)
Room 226, Motel 6, 74 South Park Drive, Colchester, Vermont, described with particularity in Attachment A

Case No. 2:17-MJ-21

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property *(identify the person or describe the property to be searched and give its location)*:

See Attachment A.

located in the ________ District of Vermont, there is now concealed *(identify the person or describe the property to be seized)*:

See Attachment B.

The basis for the search under Fed. R. Crim. P. 41(c) is *(check one or more)*:

- ☑ evidence of a crime;
- ☑ contraband, fruits of crime, or other items illegally possessed;
- ☑ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section	*Offense Description*
21 U.S.C. § 841(a)(1)	Distribution of Controlled Substances

The application is based on these facts:

See attached Affidavit.

☑ Continued on the attached sheet.

☐ Delayed notice of ____ days (give exact ending date if more than 30 days: ________) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

[signature]
Applicant's signature

Special Agent Colin Simons, FBI
Printed name and title

Sworn to before me and signed in my presence.

Date: 03/09/2017

[signature]
Judge's signature

City and state: Burlington, Vermont (South)

Hon. John M. Conroy, U.S. Magistrate Judge
Printed name and title

GOVERNMENT EXHIBIT 1
PENGAD 800-631-6989

AFFIDAVIT

I, Colin Simons, being duly sworn, depose and state:

1. I am a Special Agent with the Federal Bureau of Investigation (FBI) currently assigned to the Burlington, Vermont Resident Agency of the Albany, New York Division. I have been a Special Agent for over 13 years. I am responsible for working a variety of criminal violations, to include violent crimes and gangs. I have also been the affiant to numerous federal complaints and search warrants pertaining to violent crime and drugs. As a Special Agent, I am authorized to investigate violations of laws of the United States and to execute warrants issued under the authority of the United States.

2. I submit this affidavit in support of an application for a search warrant for Room Number 226, of the Motel 6 located at 74 South Park Drive, Colchester, Vermont (the Target Location), which is described and depicted more fully in Attachment A, for evidence relating to violations of the Controlled Substances Act, specifically the distribution of heroin, in violation of es ~~18~~ 21 U.S.C. § 841, ~~and conspiracy to distribute heroin, in violation of 18~~ 21 ~~U.S.C. § 846.~~ Based on law enforcement's investigation, TROY WASHINGTON is staying at the Target Location. The items to be seized are listed in Attachment B.

3. I am familiar with the facts and circumstances of this investigation from oral and written reports made to me by fellow law enforcement officers, my own personal involvement, as well as reviewing information for a variety of additional sources, including confidential sources, cooperating witnesses, physical surveillance, and public records.

4. For the reasons set forth in this affidavit, probable cause exists to believe that

WASHINGTON engaged in the distribution of controlled substances, specifically heroin. Further, probable cause exists to believe that the Target Location contains evidence of this criminal offense; that the Target Location contains contraband and fruits of this crime; and that the Target Location contains property designed for use, intended for use, or that has been used in committing this crime.

PROBABLE CAUSE

5. On March 9, 2017, Officer Weinisch of the Burlington Police Department (BPD) spoke with a Confidential Informant (CI) to discuss conducting a controlled purchase of heroin from WASHINGTON. The CI had agreed to assist law enforcement in exchange for consideration in a pending criminal matter that is not contingent upon the identity of the target or outcome of the investigation. The CI has convictions in the State of Vermont for DUI and felony assault-and-robbery.[1]

6. The CI advised Officer Weinisch that he/she had a phone number of 347-967-7736 for WASHINGTON. At approximately 5:00 PM, at the direction of Officer Weinisch, the CI placed a recorded call to WASHINGTON on 347-967-7736. In summary, the CI and WASHINGTON discussed how much heroin the CI wanted and what WASHINGTON would charge the CI for the heroin. It was agreed the CI would pay $180 for about a bundle-and-a-half

[1] During a previous controlled purchase, this CI was directed to purchase heroin from an individual, provided with serialized currency, and a recording device. After law enforcement dropped the CI off near the buy location, the original deal fell apart. Without coordinating with law enforcement, the CI contacted a second source, arranged a purchase, and was observed by law enforcement getting into a car that was not the target of the law enforcement operation. The CI drove around the block with the second source of supply, and exited the vehicle. After exiting the vehicle, the CI ducked down an alley, out of law enforcement view. The CI then reemerged, and proceeded to meet with law enforcement. Initially, the CI claimed the controlled purchase occurred as planned by law enforcement. After confrontation, the CI confessed to meeting with a second source of supply, after the first source was unable to meet with him. The CI also confessed that while in the alley, s/he used some of the heroin purchased during the transaction with the second source of supply.

worth of heroin. WASHINGTON told the CI that he was at the Motel 6 and he would meet the CI at the Burger King. After the phone call, Officer Weinisch confirmed with the CI that WASHINGTON was talking about the Motel 6 and Burger King in Colchester.

7. Law enforcement set up surveillance around the Motel 6 and Burger King in Colchester. The CI was searched for contraband by Officer Weinisch and none was found. The CI was then provided with an audio/video/transmitting device by Vermont Drug Task Force Detective Giancarlo DiGenova. The CI was dropped off in the vicinity of the Burger King at approximately 5:20 PM and was observed by Officer Weinisch walk toward the front of the Burger King.

8. At approximately 5:20 PM, DEA TFO Daniel Merchand observed WASHINGTON exit the Motel 6 and walk toward the Burger King.[2] A few minutes later, TFO Merchand observed WASHINGTON and the CI in the parking lot near the Burger King and walk towards and enter the Burger King at approximately 5:23 PM. Officer Chase Vivori of BPD was inside the Burger King, and observed WASHINGTON and the CI walk up to the counter and place an order. Officer Vivori observed WASHINGTON walk to the bathroom of the Burger King and enter it, but did not see the CI walk to the bathroom. After a few minutes, Officer Vivori saw WASHINGTON exit the bathroom, and a short time later, Officer Vivori saw the CI exit the bathroom. Officer Vivori had previously observed that the Burger King bathroom was a single-person bathroom. Officer Vivori observed WASHINGTON and the CI walk up to the counter area of the Burger King to wait for their order. Officer Vivori then observed WASHINGTON and the CI exit the Burger King, and walk to the gas station next door to the

[2] TFO Merchand was shown a picture of WASHINGTON prior to the operation.

Burger King.

9. The CI reentered the vehicle containing Officer Weinisch and Detective DiGenova. The audio/video/transmitting device was turned over to Detective DiGenova. The recordings have not been reviewed at this time. Detective DiGenova collected a small plastic bag from the CI which contained a tan colored powder. Detective DiGenova also searched the CI and no contraband was found. Officer Weinisch field tested the tan colored powder, resulting in a presumptive positive for the presence of heroin.

10. The CI provided a recorded sworn statement to Detective DiGenova and Officer Weinisch. In summation, the CI advised the following: at the direction of law enforcement the CI placed a recorded call into WASHINGTON to order heroin; the CI was searched and no contraband was found; the CI was provided with prerecorded law enforcement funds and an audio/video/transmitting device; the CI was driven to the area near the Burger King in Colchester by law enforcement; the CI exited the vehicle and walked toward the Burger King; the CI met WASHINGTON outside the Burger King and walked into the Burger King with WASHINGTON; the CI and WASHINGTON ordered coffee, then walked together into the Burger King bathroom; inside the bathroom the CI gave the prerecorded funds to WASHINGTON, who in turn gave the CI a clear plastic baggie containing a tan powder; while the CI and WASHINGTON were in the bathroom, an unknown person attempted to enter, prompting WASHINGTON to tell the CI to "put it in your mouth," after which the CI put the clear plastic baggie into his mouth; the unknown person apologized, and shut the door, after which WASHINGTON leaves the bathroom; the CI removes the plastic baggie from his mouth, puts it into his pocket, and exits the bathroom; the CI and WASHINGTON returned to the

counter of Burger King to wait for their coffee; the CI and WASHINGTON exited the Burger King and walked toward the gas station located next to the Burger King; the CI entered the vehicle containing Detective DiGenova and Officer Weinisch.

11. Detective DiGenova observed WASHINGTON enter a pickup truck at the gas station next to the Burger King. Detective Vivori observed the pickup truck containing WASHINGTON exit the gas station and drive toward the rear entrance of the Motel 6. WASHINGTON was observed by BPD Detective Sgt. Brad Trombley entering the rear entrance of Motel 6. BPD Officer Michael Beliveau saw WASHINGTON enter the elevator in Motel 6. Vermont Drug Task Force Detective Matthew Plunkett saw WASHINGTON exit the elevator on second floor and enter a room along with an unknown female with blonde hair. Detective Plunkett was unable to determine the exact room, but observed it to be 222, 224, 226, or 228. Sgt. Trombley saw the female with blonde hair depart the area of the Motel 6 in a dark colored truck.

12. Sgt. Trombley obtained a list of guests of Motel 6 from the front desk. According to the hotel records, Room 222, 224, and 228 were vacant. Room 226 was rented to a Mirabai Berner-Lust. Detective Plunkett contacted Berner-Lust, whom he knew from prior law enforcement contacts. Berner-Lust advised Plunkett that she had rented the room for WASHINGTON.

13. Sgt. Trombley obtained a room directly across the hall from Room 226. At approximately 6:47 PM, Officer Belvieau observed WASHINGTON and a female with dark hair exit Room 226, at which point WASHINGTON and the female were detained by BPD Sgt. Paul Petralia. Sgt. Trombley and Petralia entered the room for purposes of securing it. During the

security sweep, no other people were located within the Target Location. The Target Location has remained secured by law enforcement personnel since the security sweep.

14. The dark-haired female who exited the Target Location with WASHINGTON was identified as the sister of the CI.

INFORMATION ABOUT DRUG TRAFFICKERS

15. Finally, based on what I know about drug traffickers (through my training and experience and participation in ongoing drug trafficking investigations), I believe that WASHINGTON is likely keeping heroin, and/or proceeds from the sale of that drug and/or other items related to the distribution of controlled substances, inside the Target Location, because of the following:

a. I know that traffickers and distributors of controlled substances normally keep their drugs near their person and in the location where they are residing. Dealers do this to keep their products readily available for sale, and to provide security for their drugs as they are constantly vigilant of drug users who would steal their products, and to help keep their activities clandestine as their trade is illegal and they are constantly aware of law enforcement's efforts to discover their activity.

b. I know that traffickers in controlled substances commonly maintain names and contact information in books, ledgers, cell phones, telephones, and personal digital assistants (PDAs), which reflect the names, addresses, telephone numbers, and email addresses of their drug trafficking associates.

c. I know that it is common for drug traffickers to conceal contraband, proceeds of drug sales, and records pertaining to their drug manufacture and drug transactions, in secure locations within their residences for ready access, and traffickers commonly maintain cash on hand in order to finance their on-going business.

d. I know that persons selling and distributing regulated drugs usually keep at the locations where those activities take place, paraphernalia including scales, cutting agents, packaging materials, and instruments for consumption.

e. I know that drug traffickers frequently take or cause to be taken, photographs of themselves, their associates, their property, and their product. These traffickers usually maintain these photographs in their residences or in properties owned or rented by them.

h. I know that traffickers who have amassed proceeds from the sales of drugs will often attempt to legitimize these profits. In this process drug traffickers often utilize among other things, banks and their attendant services, securities, cashier's checks, money drafts, real estate, shell corporations, business funds, and vehicles. Records evidencing such services, items, and transactions are maintained where the traffickers have ready access to them, including properties rented by them.

i. I know that persons who deliver, distribute, or possess regulated drugs often speak with others, in person and over the telephone, regarding the acquisition and delivery or distribution of drugs. Oftentimes, particularly when speaking over the telephone, drug distributors will employ code words or speak cryptically regarding meetings, drug availability and price or about arrangements necessary to arrange and conduct deliveries. During meetings with their customers the distributors will sometimes refer to their drug sources by name or otherwise as well as make statements about the quantity and quality of the drugs which are being distributed as well as future availability of drugs and price in the future.

16. For the reasons set forth above, probable cause exists to believe that WASHINGTON engaged in the distribution of controlled substances, specifically heroin. Further, probable cause exists to believe that the Target Location contains evidence of this criminal offense; that the Target Location contains contraband and fruits of this crime; and that the Target Location contains property designed for use, intended for use, or that has been used in committing this crime. Finally, as the Target Location has been secured by law enforcement and no person remains inside the Target Location, good cause exists to allow for the execution of the search warrant at any time in the day or night.

Dated at Burlington, Vermont, this 9th day of March, 2017.

Colin Simons
Special Agent
Federal Bureau of Investigations

Sworn to and subscribed before me this 9th day of March, 2017.

HONORABLE JOHN M. CONROY
United States Magistrate Judge

ATTACHMENT A

PROPERTY TO BE SEARCHED

Room 226, Motel 6, 74 South Park Drive, Colchester, Vermont. The structure is a three-story commercial building, with white siding, and dark roof. Room number 226 is located on the second floor, has a brown door, with the number 226 displayed to the right of the door. The motel and the door to the motel room are depicted in the photographs below:

ATTACHMENT B

ITEMS TO BE SEIZED

1. Any controlled substances, including heroin, and any paraphernalia or other items relating to, or assisting in, the use, distribution or trafficking of controlled substances.

2. Any and all documents, records, electronic data, and articles of personal property relating to the purchase, possession, or distribution of controlled substances, including: cellular and smart phones, ledgers, account books, receipts, log books, telephone directories, notes, maps, receipts, correspondence, customer lists and records, suppliers' lists and records, delivery forms and records, bank and financial records including checks, money orders, mailing receipts, car and mailbox rental records, storage facility rental records, logs and journals, and records relating to domestic and foreign travel such as receipts, tickets, passports, visas, and travel schedules.

3. Any and all documents, records, electronic data, and articles of personal property evidencing the obtaining, secreting, transfer, expenditure, and concealment of money and assets derived from or to be used in the purchase, possession, or distribution of controlled substances, including: U.S. currency (including the pre-recorded Task Force funds used in controlled purchases), foreign currency, jewelry, bank books, bank statements, receipts, warranties, electronics, financial and negotiable instruments, checks, and money orders, records of wire transfers, tax records, property acquisition records, cellular and smart phones, ledgers, account books, receipts, log books, telephone directories, notes, maps, receipts, correspondence, customer lists and records, suppliers' lists and records, delivery forms and records, bank and financial records including checks, money orders, mailing receipts, car and mailbox rental records, storage facility rental records, logs and journals, and records relating to domestic and foreign travel such as receipts, tickets, passports, visas, and travel schedules.

4. Any and all documents, records and articles of personal property showing the identity of persons occupying, possessing, residing in, owning, frequenting, or controlling the subject premises, including: keys, rental agreements and records, deeds, mortgages, property acquisition records, utility and telephone bills and receipts, photographs, telephone beepers or paging devices, and storage records.